

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8494 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? NO
2. To be referred to the Reporter or not ? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? NO

HARISH M BHATT

& Anr.

Vs.

UNION OF INDIA

Appearance:

MR KK NAIR for Petitioners

MR JD AJMERA for Respondent No. 1

MR HM BHAGAT for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/07/96

ORAL JUDGEMENT

Petitioners herein were employees of the

Respondent No. 2 - Corporation, who retired from services on or before 31st December, 1995. Petitioners have received Contributory Provident Fund amount under the CPF Scheme as was operative at the time of their retirement.

The Government of India, Ministry of Finance, has issued a notification dated 28th June, 1995 and has framed rules which are known as "The Life Insurance Corporation of India {Employees} Pension Rules, 1995". Under the said rules, the Government of India has introduced pension scheme for the employees of the Life Insurance Corporation in lieu of CPF Scheme, as was in operation earlier. Under rule-3 of the said Rules, several categories of the employees have been included as the beneficiaries of the said rules. The benefits under the said rules are made available to - (a) employees who joined the services of the Corporation on or after 28th June, 1995; (b) the employees who are in the service of the Corporation before the notified date and continue to be in service of the Corporation on or after the notified date i.e., on or after 28th June, 1995; (c) employees who have retired on or after the 1st day of November, 1993 but before 28th June, 1995; and (d) employees who were in service of the Corporation on or after 1st January, 1986 but had retired before 1st November, 1993.

It is the grievance of the petitioners that though the benefit of the pension scheme has been extended retrospective as far back as on 1-1-1986, petitioners have not been given the benefit of scheme since they have retired from services of the Corporation on or before 31st December, 1985. The learned counsel Mr. KK Nair appearing for the petitioners has contended that this cut-off date of 1st January, 1986, as introduced, is arbitrary and discriminatory. Mr. Nair contended that such a cut-off date has deprived the petitioners and many others of the pensionary benefits which they would have otherwise received, had no such cut-off date been introduced. The learned counsel for the petitioners further contended that there was no genuine reason for introduction of such cut-off date and that the Corporation could have granted the benefit of pension scheme to all the retiring employees of the Corporation who had retired before the introduction of the pension scheme.

Mr. Bhagat, the learned counsel appearing for the Corporation has contested the claim of the petitioners and submitted that there are some valid and legal considerations for introduction of the cut-off

date. He submitted that the cut-off date has been introduced keeping in view the demands made by the Employees' Union. It was submitted that such a demand was raised in the year 1986, and therefore, it has been thought fit to introduce 1st January, 1986 as the cut-off date for the introduction of the Pension Scheme. Further, it was submitted that the aforesaid scheme has been modelled on the basis of similar schemes introduced by the Reserve Bank of India, Industrial Development Bank of India, etc., and that the said schemes have been introduced with effect from 1st January, 1986. The learned counsel for the respondent further submitted that it may not have been possible for the Corporation to reconstruct the records of all the persons who have retired before 28th May, 1996, and therefore, the said cut-off date was required to be introduced. The learned counsel for the respondent lastly submitted that it may not have been possible for the Corporation to shoulder the excess burden on account of introduction of Pension Scheme. More so, Mr. Nair and Mr. Bhagat have relied upon a judgment rendered by Hon'ble Supreme Court in the case of All India Reserve Bank Retired Officers Association & Ors., v/s. Union of India & Ors., reported in AIR (1992) SC p-767. Mr. Nair has relied upon para-11 of the said judgment and submitted that in the case before the Hon'ble Supreme Court, the Reserve Bank of India had come up with a specific case that the service rules required that service-record of the retired employees should be destroyed five years after the date of retirement and the service record of the persons who have retired before five years of the cut-off date would not have been available, and in that case, petitioner could not have calculated the pension which would be payable to such employees. Learned advocate for the petitioners has further urged that the reasons given by the Corporation in their affidavit are not genuine and the service record of all the retired employees are available with the respondent-Corporation. He has further submitted that the financial burden too would not be that excessive that the Corporation could not have shouldered it.

Mr. Bhagat, the learned advocate for the respondent-Corporation has relied upon para 10 and 13 of the said judgment. Hon'ble Supreme Court in para-10 of the said judgment has held that, "...in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw,

the capacity of the employer to bear the same, the feasibility of extending the same to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc." Further, in para-13 of the said judgment, Hon'ble Supreme Court has held that, "...In fixing the cut-off date the respondents had not acted mala fide with a view to deprive those who had retired on or before 31st December, 1995 of the benefit of the pension scheme but for reasons stated above, it was not practicable to extend the benefit of such retirees. The rationale for fixing the cut-off date as 1st January, 1996 was the same as in the case of Central Government employees based on the recommendation of the Fourth Central Pay Commission."

In the present case, the Corporation has followed the Schemes framed by the Central Government, Reserve Bank of India, Industrial Development Bank of India, etc., wherein the cut-off date has been fixed as 1st January, 1986. Further, in their affidavit at Para-10, it has been contended for the several reasons as stated therein, the date of 1st January, 1986 was introduced as the cut-off date for granting of the pension scheme, under the aforesaid rules. In the circumstances, the respondent cannot be said to have acted arbitrarily or acted for oblique purpose with a view to depriving petitioners and such others of the benefit of pension scheme.

I therefore do not find any merits in this petition. This petition, is therefore, dismissed summarily. Notice is discharged.

Prakash*